

Kansas Senate

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Senator Greg Smith
21st District

Chairman Guzman and members of the Senate Judiciary Committee,

Thank you for allowing me to submit testimony in support of House Bill 1308. I wish circumstances permitted me to be there in person but I appreciate you accepting my written testimony. The Kelsey Smith Act was signed into law In Kansas on April 17, 2009. Since then it has been used in Kansas multiple times by law enforcement with favorable results. Other states that have adopted this legislation have also had good outcomes. It is a tool that gives law enforcement an immediate edge in a case where a person is missing. Technology has advanced and it is necessary for us to advance with the technology to keep people safe.

I speak from the experience of a law enforcement veteran with 18 years of experience. The Kelsey Smith Act saves lives. Time is of the essence when a person goes missing and, statistically speaking, if a missing person is not found within 48 hours their chance of surviving the abduction is minimal. HB 1308 is good public policy. It fulfills the core function of government – providing for the safety of your state’s citizens. Courts recognize that the police must respond in emergency situations or people can be harmed or killed. They also recognize that law enforcement is trained to analyze evidence and information to determine what an emergency situation is. Often times this must be done under extreme circumstances and time constraints that do not allow the procuring of legal documents. This bill allows police to use best practices to respond within the realm of today’s technology and save lives.

Nine states have enacted this law and within a matter of days the total will be ten. In West Virginia it has passed both chambers and is on the governor’s desk. Rhode Island, Ohio and Nevada are all working a version of the bill. Passage is quite possible in those states this legislative session.

911 operators, family members of missing people and law enforcement from some of these states have sent emails to my wife and me or posted messages on the Kelsey Smith Foundation Facebook page with success stories. They tell us how the law has been used to bring people home alive.

I also speak from the perspective of a father whose daughter was missing. The agony of not knowing what had happened to Kelsey or knowing where she was for four days was literally a living hell. She had her cell phone with her, yet as her dad I couldn't get the location of her phone. The police couldn't get the location of her phone, even after a subpoena had been served. Why?

There are several reasons the information wasn't released for four days. I'll address two of them. The first one is that a customer service representative for a cell phone company made a decision not to kick the locate request up to someone who could actually make the decision. In essence, an employee trained to handle service issues or calling plan upgrades made the decision on what should be done in an emergency. They made the incorrect choice. The second is, without legislative certainty, no business will knowingly put itself at risk of litigation. Releasing records, even with legal documentation that requests the location of cellular device in an emergency, could, without a law providing clear public policy, make a business pause or refuse to cooperate with law enforcement. It did in Kansas in 2007. Once the information was released to law enforcement after a four day delay, Kelsey's body was located in about 45 minutes.

My wife has said it takes either lawsuits or legislation to make big corporations take notice. We did not sue the cell phone provider. What purpose would it have accomplished? No amount of money will bring Kelsey back. As a state senator in Kansas I believe that the Legislature's primary duty is to provide for the public safety. Kelsey's Law, HB 1308, is an excellent example of how government can do that. It is the Legislature; after all, that provides guidance to the courts as to legislative intent. This bill provides certainty for the business community, responsible public policy for law enforcement, and codification for the court system. It also provides for the public safety of all citizens of your state. It does all of this without a tax or budget increase.

I would again like to thank this committee for allowing me to submit testimony. I'm grateful that you are working on this legislation. I respectfully request this committee recommend HB 1308 favorable for passage so that it can be

heard by the Senate and passed into law. The people of Colorado, and for that matter, every state, deserve the protections this bill offers.

Thank you.

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